

## Message Text

LIMITED OFFICIAL USE

PAGE 01 USBERL 02635 081656Z

67

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03  
NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06  
ERDA-05 AID-05 CEA-01 CIEP-01 COME-00 EB-07 FPC-01  
INT-05 OMB-01 OES-06 STR-04 TRSE-00 ACDA-07 FEA-01  
IO-13 /115 W

----- 044976

R 081615Z DEC 76

FM USMISSION USBERLIN  
TO SECSTATE WASHDC 3565  
INFO AMEMBASSY BONN  
AMEMBASSY BERLIN UNN

LIMITED OFFICIAL USE USBERLIN 2635

E.O.11652: N/A

TAGS: ENRG, PGOV, SENV, WB

SUBJ: COURT ORDERS DELAY IN ELECTRIC POWER PROJECT

REF: USBERLIN 2530

1. SUMMARY:

A BERLIN COURT HAS ISSUED TEMPORARY RESTRAINING ORDER PREVENTING TREE CUTTING ON SITE OF PROPOSED NEW POWER PLANT. THIS MARKS FIRST STEP IN WHAT PROMISES TO BE TEDIOUS AND DRAWN OUT JUDICIAL BATTLE WHICH MAY DELAY CONSTRUCTION BY A YEAR OR MORE, PLACING ADEQUACY OF BERLIN ELECTRIC POWER IN QUESTION FOR PERIOD EARLY 1981 ONWARD.

END SUMMARY.

2. A BERLIN ADMINISTRATIVE COURT ON DECEMBER 6 ISSUED A TEMPORARY RESTRAINING ORDER FORBIDDING SENAT AND ELECTRIC POWER COMPANY (BEWAG) TO START CLEARING TREES FROM SITE OF PROPOSED NEW 600-MW THERMAL POWER PLANT. SUIT WAS FILED IN NOVEMBER IN NAME OF TWO INFANTS, INTENDED SYMBOLICALLY TO REPRESENT " BERLIN 'S FUTURE, " AND TWO CRIPPLED PERSONS RESIDENT IN AN OLD-FOLKS HOME NEAR SITE. COURT'S DECISION WAS BASED ON WRITTEN

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USBERL 02635 081656Z

SUBMISSIONS ONLY AND SENAT WAS GIVEN ONLY ONE WEEK

TO PREPARE AND FILE ITS STATEMENT. DECISION BANS  
CUTTING OF ANY TREES ON THE SITE, WORK THAT HAD BEEN  
SCHEDULED TO START NEXT WEEK, PENDING FINAL ACTION  
UNDER THE NEW FEDERAL LAW ON PROTECTION AGAINST NUISANCES  
ON APPLICATIONS TO CONSTRUCT COOLING TOWER AND BOILERS.  
COURT HELD THAT ALLOWING TREES TO BE CUT NOW WOULD IN  
FACT, IF NOT IN LAW, FAVORABLY PREJUDICE EVENTUAL ADMIN-  
ISTRATIVE DECISIONS ON THESE APPLICATIONS, A POINT OF  
LAW WHICH SENAT IS DISPUTING.

3. UNDER THE FEDERAL NUISANCE LAW, EXPERIENCE WITH  
WHICH IN BERLIN IS SCANTY UP TO NOW, CONSTRUCTION  
APPLICATIONS BY BEWAG MUST BE PLACED BEFORE APPROPRIATE  
SENAT DEPARTMENTS AND FOR TWO MONTHS MUST BE OPEN FOR  
PUBLIC INSPECTION. DURING THIS PERIOD, ANY MEMBER OF  
THE PUBLIC CAN FILE OBJECTIONS TO THE APPLICATIONS.  
OBJECTIONS MUST THEN AT SOME POINT BE DISCUSSED BY THE  
PARTIES CONCERNED, AND MUST BE TAKEN INTO ACCOUNT BY  
SENAT DEPARTMENTS IN REACHING THEIR DECISIONS. ONCE  
DECISIONS ARE RENDERED, THEY MAY BE ATTACKED IN COURT  
BY ANYONE WHO WISHES. THUS THE WAY IS OPENED FOR PRO-  
TRACTED AND TEDIOUS LITIGATION WHICH PLACES THE FUTURE  
OF BERLIN'S NEXT POWER PLANT IN MURKY SITUATION.

4. IT IS GENERALLY ASSUMED THAT ADMINISTRATIVE COURT'S  
DECISION JUST TAKEN WILL DELAY PROGRESS ON POWER PLANT  
BY A YEAR OR MORE. SENAT HAS REACTED TO COURT DECISION  
WITH " GREAT CONCERN", HAS STATED THAT POWER SHORTAGES  
ARE NOW THREATENED FROM WINTER 1980/81 ONWARD, AND THAT  
SENAT WILL VIGOROUSLY PURSUE THE MATTER WITH EVERY LEGAL  
MEANS AVAILABLE. ITS FIRST STEP HAS BEEN TO REQUEST AN  
ORAL HEARING BEFORE THE SAME COURT, WHICH WILL BE HELD  
DECEMBER 15. IF COURT CONFIRMS ITS INITIAL ORDER, SENAT  
WILL PRESUMABLY APPEAL AND EEK INFORMALLY TO EXPEDITE  
NEXT HEARING AS MUCH AS POSSIBLE. THERE IS LITTLE  
OPTIMISM HERE THAT COURT ORDER WILL BE REVERSED. A  
NEAR GROTESQUE NOTE EMERGES IN THAT A NATURE-PROTECTION  
ORDINANCE IN EFFECT IN BERLIN PROHIBITS "INTERVENTIONS"  
AGAINST FORESTS BETWEEN MARCH AND SEPTEMBER OF EACH YEAR.  
THUS SHOULD THE EMISSIONS-PROTECTION QUESTION BE SETTLED  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USBERL 02635 081656Z

IN MARCH OR APRIL, CLEARING OF TREES FROM SITE MIGHT  
STILL HAVE TO WAIT THE AUTUMN.

5. SENAT HAS CALCULATED AHT CONSTRUCTION OF POWER  
PLANT WILL REQUIRE SOME 100 BUREAUCRATIC PROCESSES, TESTS,  
PERMITS, ETCETERA. WHILE BEWAG NORMALLY HAS A COUPLE OF  
YEARS TO SETTLE THESE MATTERS WITH BUREAUCRACY, LITTLE  
HAS BEEN DONE IN PRESENT CASE SO FAR BECAUSE OF LONG DELAY

IN SENAT DECISION ON WHERE PLANT SHOULD BE LOCATED.

6. POWER PLANT SITE CONTINUES TO BE OCCUPIED BY  
SQUATTERS DRAWING CROWDS OF SYMPATHIZERS AND THE CURIOUS ON  
WEEK-ENDS. NO EFFORT HAS BEEN MADE TO REMOVE THEM AND NO  
SIGNIFICANT INCIDENTS HAVE OCCURRED SINCE REFTEL.

GEORGE

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** CONSTRUCTION, ELECTRIC POWER PLANTS, COURT DECISIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 08 DEC 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** BoyleJA  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976USBERL02635  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760454-0570  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19761260/aaaabzxl.tel  
**Line Count:** 122  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION EUR  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** 76 USBERLIN 2530  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** BoyleJA  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 28 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <28 APR 2004 by MartinML>; APPROVED <19 AUG 2004 by BoyleJA>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** COURT ORDERS DELAY IN ELECTRIC POWER PROJECT  
**TAGS:** ENRG, PGOV, SENV, WB  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006